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IN THE

Supreme Court of the United States

October Term, 1963. No. 522.

FEDERATION CREDIT UNION, LOCAL NO. 69, N.F.P.O.C. and ALFRED A. NEUBAUER, et al.,
Petitioners,

v.

HUBERT P. RENDER, JOSEPH D. KENNEDY, and WILLIAM H. NOLAN,
Respondents.

Petition for Writ of Certiorari to Supreme Court of Pennsylvania.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1963. No. 522

FEDERATION CREDIT UNION, LOCAL NO. 89, N.F.P.O.C. AND ALFRED A. NEUBAUER, ET AL.,

Petitioners,

v.

HUBERT P. RENDER, JOSEPH D. KENNEDY and WILLIAM H. NOLAN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF PENNSYLVANIA.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The Opinions of the Supreme Court of Pennsylvania are reported in 411 Pa. 625 (1963) (Appendix A to Petition). The per curiam opinion of the court below in Pennsylvania, affirmed by the majority of the Supreme Court of Pennsylvania, is unreported (Appendix B of Petition at pages 43-58).

JURISDICTION.

The Petition fails to set forth sufficient requisites to the jurisdiction of this Court.

QUESTION PRESENTED.

Where the judgment of a state court restrains officers and members of a state credit union from violating the state statute and letters patent under which it was chartered, and where the judgment rests squarely upon independent and adequate non-federal grounds, should not a petition for writ of certiorari be denied?

CONSTITUTIONAL PROVISION INVOLVED.

There are no provisions of the United States Constitution, or the Amendments thereto, involved in these proceedings, contrary to the statement in the Petition.

STATUTE INVOLVED.

The pertinent provisions of the Pennsylvania Credit Union Law, Act of May 26, 1933, P. L. 1076, as amended, 14 Pa. Stat. Annot. §201 et seq. See sections of the statute printed in Appendix D of Petition, pp. 59-61, and §§2E, 3X, 15 (14 Pa. Stat. Annot. §§202E, 203X, 215) set forth in Appendix A of this Brief, pp. 20-22.

STATEMENT.

The instant Petition arises from the entry of judgment by the Supreme Court of Pennsylvania, affirming the *unanimous* per curiam opinion of the Court of Common Pleas No. 4 of Philadelphia County, which had restrained the officers and members of a *state* chartered credit union from violating the Pennsylvania statute under which it was chartered, and further, from violating the letters patent or charter of the credit union.

The chancellor, who sat as a member of the lower court en banc, joined in the per curiam opinion of that court, sustaining exceptions to his original adjudication. The per curiam action of the court en banc, affirmed by the Penn-

sylvania Supreme Court, operated to extinguish any independent existence of the chancellor's adjudication.[1]

In 1959 respondents, as shareholders and members of the petitioner, Federation Credit Union, Local No. 89, N.F.P.O.C. (hereinafter referred to as "Credit Union") instituted an equitable action against the individual petitioners who, until December 28, 1958, had been the officers, directors and committee members of the Credit Union (R. 1a, 6a-14a, 130a, 155a, 156a, 346a, 347a). Prior to December 28, the petitioners had also been members in good standing of Local Union No. 89 of the National Federation of Post Office Clerks, AFL-CIO (hereinafter referred to as "Local 89") (P-8, R. 209a-212a; 239a, 243a). However, the individual petitioners, disaffiliated from Local 89 on December 28, 1958, and they are presently members of a new organization known as the "Philadelphia Post Office Clerks Union" (hereinafter referred to as "Clerk's Union") whose aims and objectives are identical with those of Local 89 (Findings of Fact Nos. 7, 10, R. 357a, 358a, Appendix B of Petition, pp. 53, 54).

The Credit Union was established in 1934 by the issuance of Letters Patent by the Governor of Pennsylvania, based upon a duly filed Application for Incorporation (Finding of Fact No. 1, R. 356a, Appendix B of Petition, p. 52; P-3, P-3a, R. 195a-202a). The Letters Patent provide in Section 8 as follows:

> "The membership of the said CREDIT UNION will be *limited to members in good standing of Local Union No. 89*, National Federation of Post Office Clerks in the postal district of Phila., Pa." (Emphasis supplied) (P-3a, R. 198a).

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[1] The attention of the Court is directed to the fact that the per curiam opinion of the court en banc is printed in Appendix B of the Petition (pp. 43-58) **following**, rather than **preceding**, the original adjudication (pp. 21-43).

The Credit Union has been in operation continuously since 1934. Article II, Sections 1 and 6 of its By-Laws provide that membership in the Credit Union is limited to members in good standing of Local 89, as set forth in the Letters Patent, and that a member who leaves "the sphere of operation" of Local 89 may retain his shares, but may *not* become a borrower or an officer, director or committee member (Findings of Fact Nos. 3-5, R. 356a, 357a, Appendix B of Petition, pp. 52, 53).

The latter limitation upon membership is in accordance with the Pennsylvania Credit Union statute,[2] which provides in Section 4, in pertinent part, as follows:

> ". . . Credit union organizations shall be limited to groups . . . having a common bond of association by reason of occupation within a well defined neighborhood, community, or rural district." (Appendix D of Petition, p. 59.)

In the case at bar the common bond of association has at all times been membership in good standing in Local 89.

Local 89 is governed by a Constitution, Article III, Section 1 of which relates to eligibility for membership and provides that certain classifications of post office employees shall be eligible, excepting, however, ". . . any person who is a member of any other Post Office Clerks' Organization whose ostensible aims are identical with those of the National Federation of Post Office Clerks." (P-1, R. 176a, 177a, 346a, Appendix B of Petition, p. 45.)

For some time prior to December 28, 1958, the individual petitioners had been engaged in the organization of the

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[2] Act of May 26, 1933, P. L. 1076, as amended, 14 Pa. Stat. Annot. §201 et seq. (hereinafter referred to as the "Act").

Clerks Union as a rival to Local 89, contrary to the Constitution of Local 89, supra, and its By-Laws.[3]

On December 28, 1958, the individual petitioners formally severed their affiliation with Local 89 by adopting a resolution of disaffiliation at a meeting convened for that purpose at *2 o'clock P. M.* (P-8, R. 209a-212a; Finding of Fact No. 10, R. 358a, Appendix B of Petition, p. 54). *Immediately* after the adjournment of this meeting, a special meeting of the Credit Union was held at *4 o'clock P. M.*, at the same place, and there the individual petitioners, and others who had disaffiliated from Local 89, voted in favor of amending the By-Laws of the Credit Union by changing the name from "Federation Credit Union No. 89, N.F.P.O.C." to "Philadelphia Post Office Clerks Credit Union". (Finding of Fact No. 11, R. 358a, Appendix B of Petition, p. 54).

A second special meeting of the Credit Union was called by the individual petitioners on April 27, 1961 where proposed amendments to the Articles of Association and By-Laws of the Credit Union, involving eligibility for membership and the proposed change of name, were again voted upon by the individual petitioners and those who had disaffiliated from Local 89 (R. 247a-253a, 348a, 349a, Appendix B of Petition, pp. 46, 47).

The Pennsylvania Supreme Court affirmed the lower court's findings and conclusions that the attempt of the individual petitioners, in each of the above instances, to amend the Articles of Association and By-Laws of the Credit Union was contrary to the substantive provisions of the Act, the Articles of Association and the By-Laws, and was, therefore, a nullity (Conclusions of Law Nos. 11-14, R. 361a, Appendix B of Petition, pp. 48, 55, 56). The basis for these

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[3] In addition to the excerpts from the Constitution of Local 89 in P-1, R. 175a-179a, see Article VI, Section 2 (Appendix B of this Brief, p. 23) and Constitution and By-Laws of National Federation of Post Office Clerks: Article VI, Section 3, Article VIII, Section 8 (Appendix C of this Brief, p. 24).

conclusions was the finding that the votes purporting to approve the proposed amendments were cast by individuals "... who were not members in good standing of Local No. 89, N.F.P.O.C." (Findings of Fact Nos. 14, 15, R. 359a, Appendix B of Petition, p. 54).

The court en banc found further that the individual petitioners had since their act of disaffiliation from Local 89 on December 28, 1958 operated the Credit Union in an unlawful manner and for an unlawful object (Findings of Fact Nos. 12, 13, R. 358a, 359a, Appendix B of Petition, p. 54; Conclusions of Law Nos. 8, 9, 15, R. 360a, 361a, Appendix B of Petition, pp. 55, 56).

The crux of the holding below is found in the following passages of the per curiam opinion:

> "In light of the sequence of events of December 28, 1958, it is clear that those who voted to amend the name of the credit union were not members of the credit union as defined and set forth in the Articles of Association and By-Laws of the credit union . . .
>
> * * * * * * * *
>
> ". . . Therefore, under the Act of 1933, the Articles of Association of the credit union and its By-Laws, such attempted amendments are clearly a nullity . . .
>
> * * * * * * * *
>
> "Plaintiffs' (respondents herein) argument that defendants (petitioners herein) have sought to change the organic purpose of the credit union must likewise be affirmed. Defendants have taken control of the credit union and its assets contrary to the applicable law, the Articles of Association and By-Laws. Moreover, they have attempted to unlawfully change the purpose for which the credit union was chartered and seek to transfer its funds and property to the Federation Credit Union, the proposed new name of the credit

union" (R. 348a, 351a, 355a, Appendix B of Petition, pp. 46, 48, 51).

Basic to the proceedings in the courts of Pennsylvania was whether or not a court of equity had jurisdiction to grant the injunctive and affirmative relief sought by respondents against the unlawful conduct and actions of the individual petitioners [See Pennsylvania Supreme Court: Brief for Appellees (pp. 12-28), Brief for Appellants (pp. 28-34)]. This issue was resolved against petitioners, the relief prayed for by respondents was granted, and the decree of the court en banc was affirmed by the Supreme Court of Pennsylvania (Conclusions of Law Nos. 18-24, R. 362a, 363a, Appendix B of Petition, pp. 56-58).

Before proceeding to the argument and reasons for denying the writ, respondents call the Court's attention to the fact that petitioners have, in setting forth their statement of the case relied almost verbatim upon the dissenting opinion of Justice Roberts of the Pennsylvania Supreme Court. Hence, to comment upon it at this point would only be to quarrel with the dissenting opinion (compare Petition, pp. 3-5 with Appendix A of Petition, pp. 17-19).

ARGUMENT.

The reasons for denying the Petition for Writ of Certiorari in this case are manifold.

First, it is difficult to imagine a clearer case of a state court judgment resting upon a truly independent and adequate non-federal ground. Even the petitioners are compelled to concede that the majority opinion of the Pennsyl-

vania Supreme Court "ostensibly is based solely upon a non-federal ground" (Petition, p. 6).

Secondly, the record is clear in this case that the petitioners utterly failed to raise the alleged federal question involving the "due process clause" of the 14th Amendment in the proceedings before the Supreme Court of Pennsylvania. An examination of the petitioners' Brief to the Pennsylvania Supreme Court confirms this fact. Significantly, they do not state in the Petition that it was raised in their brief. Reference to the Petition, in this connection, clearly indicates their awareness that the "due process" question was "first cognizable" after entry of the final decree by the court en banc and prior to the appeal to the Pennsylvania Supreme Court (Petition, p. 6). Yet the only reference to the record which petitioners can make is that contained in the dissenting opinion of Justice Roberts of the Pennsylvania Supreme Court (Petition, p. 6).

Thirdly, there is, in fact, no federal question in these proceedings. This contention of respondents is supported by an examination of the Petition (pp. 2-14), which demonstrates an unwillingness or inability on the part of the petitioners to state their questions or to present reasons for granting the writ in terms of a clear-cut federal question.[4]

Finally, the petitioners have failed to advance any "special and important reasons" which would warrant the granting

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[4] The petitioners have characterized the action of the Pennsylvania Supreme Court as "without justification or authority" (p. 7, lines 10, 11; p. 8, line 32), "unsound and unnecessary" (p. 8, line 34), "to usurp the powers of the Secretary of Banking" (p. 11, lines 16, 17), "anomalous" (page 12, line 34), "unfortunate conflict" (p. 13, line 9), and "detrimental results" (p. 14, lines 18, 19). It is significant that the petitioners have consciously or unconsciously refrained from casting the holding of the Pennsylvania Supreme Court in terms of a violation of the petitioners' rights of "due process" under the 14th Amendment.

of the writ under the criteria set forth in Rule 19(1) of this Court.[5]

A. The Judgment of the Pennsylvania Supreme Court is based upon independent and adequate non-federal grounds.

In affirming the per curiam decree of the court en banc, the Pennsylvania Supreme Court said:

> "In this action the chancellor, as a member of the court en banc, joined in sustaining exceptions to his adjudication. The decree of the court en banc restrained officers and members of a credit union from violating the statute under which the credit union was chartered and the Letters Patent chartering the credit union" (Petition, Appendix A, p. 16).

The Court in this brief, lucid opinion dispelled any question or doubt as to the non-federal basis for its decision. The individual petitioners, as officers and members of a state chartered credit union, were restrained from (1) violating the state statute, and (2) violating the charter or Letters Patent under which the credit union was chartered.

Respondents respectfully submit that there can be no

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[5] The petitioners have set out in footnote 8 of their Petition (pp. 6, 7) certain statistics which do not appear of record, pertaining to **federal** credit unions, in an obvious and belated attempt to attach a significance to this case which is non-existent. This case is **sui generis**, and it involves nothing more than the construction of the Pennsylvania Credit Union Law, supra, and the conduct of the individual petitioners with respect to a state credit union chartered under this law. The petitioners also included in the Petition (Appendix F, pp. 68-71) excerpts from an opinion of the Supreme Court of New York, which involves a **federal** credit union, and which has no application in this case for the same reason.

clearer instance of the disposition of a case on non-federal grounds than the action of a state court in restraining the violation of an act of the legislature as well as the violation of a charter issued pursuant to the authority of the same act. It must be borne in mind that it was the unlawful actions of the individual petitioners in these proceedings which resulted in the entry of such a decree.

The Letters Patent of the Credit Union, issued in 1934, provide in Section 8 that membership in the credit union is limited to "members in good standing" of Local 89. The By-Laws contain the same limitation and provide additionally, in conformance with the Pennsylvania Credit Union Law, that a member who leaves the "sphere of operation of the corporation", i.e., Local 89, may *retain his shares*, but may not become a borrower, officer, director or committee member of the Credit Union. See By-Laws, Article II, Sections 1, 6 (P-2, R. 181a, 182a).

The individual petitioners on December 28, 1958 *voluntarily* disaffiliated from Local 89 and formed a rival union. The subsequent actions of the petitioners after disaffiliation were not taken as members of Local 89 and, therefore, were without the sanction of, and in conflict with, the Act, the Letters Patent, and the By-Laws. Thus, the two attempts to amend the By-Laws in December of 1958 and in April of 1961, each of which sought to destroy the organic purpose of the Credit Union, were deemed a nullity since the votes for these amendments were cast by "individuals who were not members in good standing" of Local 89 (Appendix D of Petition, pp. 54-56).[6]

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[6] The petitioners belabor the Pennsylvania Supreme Court for having allegedly usurped the power of the Secretary of Banking to approve amendments under Section 3X of the Act (Appendix A of this Brief, pp. 21, 22); Petition, pp. 11-14. The court en banc, affirmed by the Pennsylvania Supreme Court, found that the purported amendments were a nullity (R. 351a).

Further, the control and management of the Credit Union, and the continuance in office by the individual petitioners after December, 1958 was unlawful since they had ceased to be eligible for office under the Letters Patent and the By-Laws. They had after that date continued to grant loans to individuals not in good standing in Local 89, contrary to the By-Laws (Article II, Section 6, supra).

It was under these circumstances that the court en banc granted the prayer of respondents' complaint for equitable relief, restraining further unlawful conduct and ordering the individual petitioners to return control of the credit union to the respondents as representatives of the members in good standing of Local 89. Viewed in this context, the contention of petitioners that they were deprived of "due process" is plainly makeweight and wholly without merit.

The petitioners would have this Court adopt their contention that a federal "due process" question exists by virtue of the alleged failure of the Pennsylvania Supreme Court to give effect to Section 18 of the Act, which pertains to the procedural requirements for the expulsion of a member from a credit union (Petition, pp. 7, 8). However, there is no issue in this case of expulsion from membership in the Credit Union or deprivation of property rights within the meaning of Section 18 of the Act. This Section has no application to members who *voluntarily* leave the "sphere of operation" of the Credit Union, as did the individual petitioners by their voluntary act of disaffiliation from Local 89. After leaving the "sphere of operation", they no longer possessed the requisite standing in the Credit Union to effect amendments to the Articles of Association or the By-Laws, or to continue their operation and management of the Credit Union. But their "property rights" in existing shares on deposit in the Credit Union continued unimpaired by express provision in Article II, Section 6 of the By-Laws and Section 18 of the Act, supra.

It is submitted that the Pennsylvania Legislature in enacting the Credit Union Law has guaranteed to *all* members of Credit Unions duly chartered thereunder, full protection (1) in the exercise of the rights of membership and (2) in the property invested therein.[7] It was solely the refusal of petitioners to abide by the Act, the Letters Patent and the By-Laws in the aforesaid respects, upon disaffiliation from Local 89, that resulted in the decree of the court en banc, affirmed by the Supreme Court of Pennsylvania.

In adjudicating the rights of the parties to this proceeding, the Pennsylvania courts properly relied upon and applied *only* Pennsylvania law, in particular the applicable Act of the Legislature and the decisional law of the Pennsylvania Supreme Court (Appendix B of Petition, per curiam opinion, pp. 43-52). Hence, this is not a case involving the application of federal statutes or the transgression of Congressional policy, as petitioners would lead this Court to believe.[8] Such argument as the petitioners advance regarding the purported existence of federal substantive law in this case is based upon the original adjudication of the chancellor, which ceased to have an independent existence in these proceedings upon his joining with the court en banc in the per curiam opinion. This was duly noted by the Supreme Court of Pennsylvania in affirming the per curiam decree (Appendix A of Petition, p. 16). Aside from the

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[7] See, for example, Sections: 2E (amendment of Articles), 4 (requisites of membership), 5 (supervision by Department of Banking), 6 (rights at meetings), 15 (requisites for loans), and 18 (procedural guarantees in cases of expulsion from membership; right of expelled or withdrawing member to net funds on deposit). Appendix D of Petition, pp. 59-61, Appendix A of this Brief, pp. 20-22.

[8] See, for example: Petition, Question Presented, III, p. 2; the reference to interstate commerce in the original adjudication of the chancellor, p. 5; argument on Question Presented, III, pp. 14, 15; Appendix C, excerpts from Labor-Management Relations Act of 1947 and Labor-Management Reporting and Disclosure Act of 1959, pp. 58, 59

present legal status of the original adjudication, the contentions and argument advanced in support of Question Presented, III, are without legal substance.

Respondents submit that petitioners' argument and citation of authorities (Petition, pp. 9-11), flatly fails to establish a denial of due process by the Supreme Court of Pennsylvania in affirming the per curiam opinion of the court en banc. The respondents do not quarrel with the authorities of this Court cited by the petitioners in this connection, but do strenuously contend that they have no application to the actions of the Pennsylvania courts in these proceedings. The suggestion by the petitioners that they have application in this case is untenable and makeweight.

Respondents again direct the Court's attention[9] to the fact that the petitioners' argument (Petition, pp. 11-14) that the decision of the Pennsylvania Supreme Court operated to "usurp the powers of the Secretary of Banking" is patently absurd. It is true that Sections 2E and 3X of the Act, supra, do impose certain ministerial duties upon the Secretary of Banking. The obvious effect of the holding of the Pennsylvania courts in this case is that the Secretary of Banking cannot impart validity to amendments submitted to him for approval which were not validly adopted, i.e., a nullity as found by the court en banc.[10] Thus, petitioners are merely begging the question when they belabor the Pennsylvania Supreme Court for having allegedly failed to permit the Secretary of Banking to function, in this case, under the applicable Sections of the Act.

As noted previously, there is nothing in this case which involves a *federal* credit union. Hence, the inclusion by

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[9] See footnote 6, supra.

[10] Petitioners twice state that the amendments of April 27, 1961 "were approved" by the Department of Banking (Petition, pp. 4, 12). This was not part of the record in the proceedings below.

the petitioners of excerpts from a decision of the New York Supreme Court (Appendix F of Petition, pp. 68-71), involving a *federal* credit union, has no application to the instant case, nor does the supporting argument in the Petition (p. 12). The case referred to by the petitioners involved the question of whether or not Congress had vested in an administrative agency primary jurisdiction over *federal* credit unions.

Finally, respondents submit that the foregoing analysis of the proceedings in the Pennsylvania courts wholly supports the basic proposition herein that there was no federal question involved in these proceedings, at any time. Even assuming *arguendo* that there was a federal question, it is manifest beyond doubt that the decision of the court en banc, affirmed by the Pennsylvania Supreme Court, was correctly predicated upon an *independent and adequate non-federal ground*. This Court has held many times that it will not review decisions of state courts in these circumstances.

Cramp v. Board of Public Education, 368 U. S. 278, 281 (1961);

Black v. Cutter Laboratories, 351 U. S. 292, 297, 298 (1956);

Herb v. Pitcairn, 324 U. S. 117, 125, 126 (1944);

Fox Film Corp. v. Muller, 296 U. S. 207, 210 (1935).

In *Durley v. Mayo*, 351 U. S. 277, 281 (1956), this Court held, inter alia, that where adequate state grounds are asserted, it is petitioner's burden to show that none of the state grounds account for the decision of the state court, and further, that this burden is *not* met if the state judgment *might* have rested on a non-federal ground.

It is respectfully submitted that the petitioners in the case at bar have not met the substantial burden required by this Court for the granting of a writ.

B. The Petitioners failed to raise a federal due process question before the Pennsylvania Supreme Court.

Preliminarily, it should be noted that the petitioners and the respondents have been, and are, the only parties of record in these proceedings.[11] The significance of this fact is relevant to consideration of the alleged federal due process question which petitioners seek to articulate for the first time in the proceedings now before this Court.

The petitioners in their Statement of the Case concede that the "due process" clause of the 14th Amendment of the United States Constitution was "first cognizable" after the final decree of the court en banc was rendered and prior to the taking of the appeal by the petitioners to the Pennsylvania Supreme Court (Petition, p. 6). What the petitioners omit to state, however, is that they wholly failed to raise the "due process" question in their Brief to the Pennsylvania Supreme Court. This omission is underscored by the fact, as stated in the Petition (p. 6), that:

> ". . . the only mention *of record* of a deprivation of due process, is that of Mr. Justice Roberts and Mr. Chief Justice Bell in their dissenting opinion . . . The decision of the majority of the Supreme Court of Pennsylvania ostensibly is based solely upon a non-federal ground . . ."

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[11] The Pennsylvania Secretary of Banking and the Pennsylvania Credit Union League filed briefs with the Pennsylvania Supreme Court in the nature of **amicus curiae**, as permitted under the Rules of the Pennsylvania Supreme Court. At no time did either seek to intervene as a **party** in these proceedings at any stage of the litigation under the local rules of the Pennsylvania courts. Notwithstanding, the petitioners have included the Brief of the Secretary of Banking as Appendix E of Petition, pp. 62-68.

It is well settled by the decisions of this Court that a litigant is precluded from raising federal questions which could have been, but were not raised and presented to the state court.

> *Shelley v. Kraemer*, 334 U. S. 1, 8 (1948);
> *Wilson v. Cook*, 327 U. S. 474, 483, 484 (1946);
> *McGoldrick v. Compagnie Generale Transatlantique*, 309 U. S. 430, 434, 435 (1940).

As this Court said in *Williams v. Kaiser*, 323 U. S. 471 (1945) at page 477 of its Opinion:

> ". . . before we will review a decision of a state Court it must *affirmatively* appear from the *record* that the federal question was presented to the highest court of the State having jurisdiction and that its decision of the federal question was *necessary* to its determination of the cause . . . ." (Emphasis supplied).

An examination of the Brief submitted by petitioners to the Supreme Court of Pennsylvania makes it abundantly clear that there was no federal "due process" question presented to the Pennsylvania Supreme Court.[12]

The failure of the petitioners to have raised the "due process" question in *their* Brief is substantiated by the fact that in the "Petition For Certificate Under 28 U. S. C. 1257," filed by the petitioners with the Pennsylvania Supreme Court in the course of perfecting the instant appeal, the petitioners, in Paragraph 4 thereof, were able to refer *only* to the Brief of the Pennsylvania Credit Union League (pp.

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[12] It is well settled that this Court will not recognize oral argument to a court as part of the record of the case, so that petitioners could not advance the contention that they made oral argument to the Pennsylvania Supreme Court of the federal due process question. **Sayward v. Denny**, 158 U. S. 180 (1895).

12-14) as having dealt with "the loss of property rights." As heretofore noted, the Pennsylvania Credit Union League was never a party in these proceedings, and hence, the petitioners cannot seek refuge in that brief as fulfilling the requirement of this Court that these matters be raised by a *party* in the state court.

C. There exist no special and important reasons for granting the writ.

Rule 19(1) of this Court provides, in part, that the granting of a writ of certiorari:

> "... is not a matter of right, but of sound judicial discretion, and will be granted only where there are *special and important reasons* therefor ..." (Emphasis supplied).

The Court in the case of *Rice v. Sioux City Memorial Park Cemetery*, 349 U. S. 70 (1955), construed Rule 19 in the course of dismissing a writ improvidently granted:

> "A federal question raised by a petitioner may ... present an intellectually interesting and solid problem. But this court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants ... 'Special and important reasons' imply a reach to a problem beyond the academic or the episodic ..." (349 U. S. at 74).

A fair examination of the Petition with reference to Rule 19 and the above comments thereon in the *Rice* case demonstrates clearly that "special and important reasons" for granting the instant writ are non-existent. The instant factual situation is of interest to the litigants, of course, but

it is *sui generis*. The likelihood of such a case arising again is remote indeed. It is difficult indeed to conceive of the questions decided in these proceedings as having any general interest or application "beyond the academic or the episodic."

That petitioners are aware of the foregoing is apparent from their futile attempts to dramatize this case by injecting irrelevant national statistics on state and federal credit unions (Petition, pp. 6, 7, footnote 8).

To grant the prayer of the Petition would place this Court in the position of sitting ". . . for the benefit of the particular litigants."

Rice v. Sioux City Memorial Park Cemetery, supra.

CONCLUSION.

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

EDWARD DAVIS
Counsel for Respondents

November 1, 1963

APPENDIX A.

Pennsylvania Credit Union Law of May 26, 1933, P. L. 1076, as amended:

Section 2E (14 Pa. Stat. Annot. 202E).

Method of Incorporation. A credit union may be incorporated in the following manner, to wit:

* * * * * * * * *

E. The articles of association may be amended by including the proposed amendments in the call for the regular or special meeting at which such amendments are to be considered. Amendments to the articles of association must be approved by three-fourths of the members present at the regular or special meeting at which the amendments are considered, and the proposed amendments shall be acted upon only in the event that a quorum of the members is present, as provided in the by-laws of the credit union. Articles of amendment shall be filed with the Secretary of Banking who, if he approves the amendments, shall forward the articles of amendment to the Department of State. The Secretary of the Commonwealth shall then issue a new certificate of incorporation, and shall record the articles of amendment in the office of the Secretary of the Commonwealth upon payment of the usual filing fee. The articles of amendment shall set forth —

I. The name and principal place of business of the credit union.

II. The amendment or amendments as adopted by the members.

III. The date of the meeting at which the amendment or amendments was adopted.

IV. That notice of the meeting at which the amendment or amendments was considered was given to each member as provided in the by-laws.

V. That, at the meeting at which the amendment or amendments was considered, a quorum of the members was present as provided in the by-laws.

VI. That the amendment or amendments was approved by three-fourths of the members then present.

The articles of amendment shall be signed by the president and clerk of the credit union and acknowledged before any officer authorized to take acknowledgments and administer oaths and affirmations in this Commonwealth, and they shall also make and subscribe an oath or affirmation before said officer that the statements contained therein are true.

Section 3X (14 Pa. Stat. Annot. 203X).

Powers. Each credit association so formed under the provisions of this act, and when so formed by virtue of its existence as such, shall have the following powers:

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X. To make, amend, and alter by-laws, not inconsistent with law, for the regulation of its affairs and the conduct and management of the credit union. By-laws so made,

amended, or altered shall not become operative, however, until approved by the Department of Banking.

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Section 15 (14 Pa. Stat. Annot. §215).

Loans. A credit union may make loans to its members only. Loans must be for a purpose deemed by the credit committee to be provident or for productive purposes, and must be made subject to the conditions contained in the by-laws. A borrower may repay his loan, in whole or in part, any day the office of the credit union is open for business. A director, officer, or member of any committee may only borrow from the credit union in which he holds office, an amount not exceeding his total share holdings plus the total share holdings free and unpledged of any endorser on the obligation of such director, officer or member of any committee. No director, officer, or member of any committee may endorse a loan granted by the credit union in which he holds office.

APPENDIX B.

EXCERPTS FROM CONSTITUTION OF LOCAL UNION NO. 89—NATIONAL FEDERATION OF POST OFFICE CLERKS.

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ARTICLE VI.

OFFICERS.

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Section 2. No member of this Local Union holding membership in any other Post Office Clerks' organization whose ostensible aims are identical with the National Federation of Post Office Clerks shall be eligible to hold any elective office or act as a representative or delegate from this Local Union to any convention of the American Federation of Labor-Congress of Industrial Organizations or the National Federation of Post Office Clerks.

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APPENDIX C.

EXCERPTS FROM CONSTITUTION AND BY-LAWS OF THE NATIONAL FEDERATION OF POST OFFICE CLERKS—AFFILIATED WITH THE AFL-CIO.

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ARTICLE VI.

OFFICERS, COMMITTEES, AND ELECTIONS.

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Sec. 8. No clerk, holding membership in any other postal employee organization whose ostensible aims are identical with the National Federation of Post Office Clerks can be seated as a delegate to a convention or elected as an officer of the National Federation of Post Office Clerks.

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ARTICLE VIII.

REVENUES AND CHARTERS—FISCAL YEAR.

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Sec. 8. The Executive Board is hereby vested with authority to revoke the charter of any local whenever, upon evidence satisfactory to a majority of the Executive Board, it is shown that a local is guilty of disloyalty or where its actions have been adverse or detrimental to the welfare of the rank and file of the National Federation of Post Office Clerks.

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